

December 23, 2002

Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
750 1st Street, N.E. 11th Floor
Washington D.C. 20002-4250

Re: Comments on Proposed Revised
45 C.F.R. Part 1611

Dear Ms. Condray:

The Legal Assistance Foundation of Metropolitan Chicago ("LAF") is the LSC-funded recipient for Cook County, Illinois, annually serving in excess of 30,000 clients. We are submitting these comments to the proposed amendments to federal regulations governing financial eligibility for clients of LSC-funded legal services programs.

1. **Retainer Agreements.** The current regulation (Section 1611.8) requires recipients like LAF to obtain and maintain client retainer agreements in a broad range of cases, and requires every retainer agreement to be approved by LSC. Our program currently uses seven different retainer forms and altering them had been a cumbersome process given the need for regulatory approval. The proposed amendments omit reference to retainers, allowing recipients to fashion their own rules regarding retainer agreements. LAF supports this change. We believe that our program can best determine the circumstances that will require the execution of a retainer agreement and the form thereof. Elimination of this rule will enable us to develop and implement our own forms and rules regarding their use, tailored to our needs, and saving case-handler time and effort in many cases.

2. **Definition of "Assets."** The new definition of "assets" in the proposed amendments eliminates the prior distinction between liquid and non-liquid assets; this will eliminate confusion that had existed before. Moreover, by tying the definition of "assets" to the concept of "resources that are readily convertible to

cash” and available to the client, the new definition provides excellent guidance to legal services lawyers and is fair to our clients. LAF supports the change in this definition.

3. Definition of “Income.” The proposed rules should change the definition of “income” to net income after payroll taxes rather than gross income. A modification of this sort would benefit the many working poor that have great need for legal services. In Chicago we have encountered a good number of working persons who are slightly above federal poverty guidelines but who face grave legal problems, ranging from foreclosure of their homes to domestic violence. The “tweaking” of the “income” definition to focus on pay *after* taxes are deducted would be a logical step forward.

4. Section 1611.3; Financial Eligibility Policies.

(a) The move to a triennial review of financial eligibility policies will save the governing boards of recipients like LAF countless hours of work. It will also mean a more meaningful review of agency eligibility policies will be conducted every three years. LAF favors this amendment.

(b) The proposed rule for assets which can be excluded does not go far enough by limiting excludable assets to four categories. Recipients should be allowed the discretion to exclude other categories of assets. Why, for example, should vehicles required for work be excludable but vehicles needed to transport elderly or disabled clients to medical providers *not* be excludable? The rule should give recipients the authority to exclude categories of assets that are appropriate to the circumstances of the community served.

(c) LAF supports the provisions in Sections 1611.3 and 1611.4 that would allow us to determine that an applicant is financially eligible based on their eligibility for another low-income governmental benefits program, like food stamps. This will shortcut the often time-consuming intake process, to the benefit of the applicant and LAF.

5. Authorized Exceptions to Income Ceilings.

(a) Section 1611.5 provides a new rule that will allow LAF to represent applicants in cases where they are seeking to maintain governmental benefits for low-

income persons even if these benefits, combined with the applicant's other income, places them above LSC income limits. This is the type of flexibility that inures to the benefit of applicants and recipients such as LAF, and allows legal services to be provided where great need is evident. The new rules would also allow LAF to provide services to individuals whose income is primarily devoted to medical or nursing home expenses. This provision also gives LAF additional flexibility which will benefit clients, but the proposed language should be modified so that it does not require the Executive Director or his designee to make a determination of applicability.

(b) New Section 1611.5 raises the ceiling on income eligibility to 200% of federal poverty guidelines; LAF supports this change also.

6. **Section 1611.6.** This section would allow LAF to rely on the eligibility determination of another, referring recipient rather than conducting a second eligibility determination. This change will save some time where clients are referred to LAF from outside our service area. The section's elimination of the requirement that LSC approve recipient's eligibility forms and procedures is also a welcome development as it constitutes a further streamlining of the regulatory process.

7. **Section 1611.7.** The language in this section would give LAF additional options when we learn that a client is not financially eligible for service. Under this new language LAF will discontinue representation with LSC funds but will be able to continue providing service with non-LSC funds where our professional responsibility to the client demands it. This provision will prevent prejudice to a client's interest where, for example, the discovered ineligibility occurs on the eve of trial.

8. **Section 1611.8. Group Representation.** The proposed rules provide four situations where recipients may use LSC funds to represent groups. LAF has always considered the representation of groups that lack the means to obtain private representation to be a vital component of our service to low-income communities. We have accomplished a great deal by working with public housing tenant groups and other groups committed to improving the lot of low-income persons. This proposed rule will give our lawyers additional guidance on which groups we may serve and the means to document their eligibility.

In sum, the proposed regulations are a step forward for recipients such as LAF, and their clients. We urge LSC to consider those comments above where we believe the rules could use improvement.

Sincerely,

Sheldon Roodman
Executive Director

Alan A. Alop
Deputy Director